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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

December 30, 1993

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N. W.
Washington, D. C. 20554

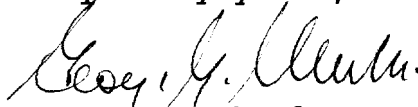
Re: Personal Communications Services - Gen. Docket
No. 90-314 (RM-7140, RM-7175, RM-7617)

Dear Mr. Caton:

Transmitted herewith on behalf of Telephone and Data Systems, Inc. ("TDS") are an original and eleven copies of its Comments in the above-referenced proceeding.

In the event that there are any questions concerning this matter, please communicate with the undersigned.

Very truly yours,


George Y. Wheeler

Enclosure

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In the Matter of)	GEN Docket No. 90-314
)	
Amendment of the Commission's)	RM-7410, RM-7175, RM-7617
Rules to Establish New Personal)	
Communications Services)	

TO: The Commission

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COMMENTS OF
TELEPHONE AND DATA SYSTEMS, INC.

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December 30, 1993

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SUMMARY

Telephone and Data Systems, Inc. comments regarding a number of significant changes or clarifications proposed in the petitions for reconsideration of the Commission's final action in its Second Report and Order in GEN Docket No. 90-314 as follows:

Expanded Opportunities to Participate in PCS Deployment.

The Commission should adopt the proposals of OPASTCO, ATU, Iowa Net and Rural Cellular to exempt rural telephone companies from the Commission's cellular eligibility restrictions. The Commission should also redefine its cellular eligibility threshold in Section 99.204 of its rules to specify the "30-35/40" eligibility threshold proposed by CTIA. The Commission should deny the proposals of MCI, GCI, UTC and others regarding additional cellular eligibility restrictions and set-asides for private non-commercial systems. These proposals would create unnecessary and counterproductive restrictions on fair opportunities for numerous and diverse participation in PCS deployment.

Post-Grant Options to Establish Compliance With Cellular Eligibility Restrictions. The Commission should clarify its rules and policies so that companies which are otherwise restricted under the cellular eligibility rules have the option to establish compliance prior to initiation of PCS as proposed by McCaw and GTE.

Broadened Eligibility Restrictions To Treat ESMR Like Cellular. While TDS strongly supports withdrawal of all eligibility restrictions, it is essential that the fundamental consistency of the Commission's rules as applied to cellular carriers and ESMR carriers be established and set forth fairly in the Commission's rules with respect to eligibility restrictions. The proposals of CTIA, Sprint and U.S. West to apply cellular eligibility restrictions equally to ESMR licensees should be adopted.

Uniform 20 MHz Channel Plan. The Commission should adopt a uniform 20 MHz channel plan which affords all potential participants in PCS access to adequate spectrum to be fully competitive. The proposals of Bell Atlantic and Point should be adopted.

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FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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OFFICE OF THE SECRETARY

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In the Matter of) GEN Docket No. 90-314
)
Amendment of the Commission's) RM-7140, RM-7175, RM-7617
Rules to Establish New Personal)
Communications Services)

TO: The Commission

COMMENTS OF
TELEPHONE AND DATA SYSTEMS, INC.

Telephone and Data Systems, Inc., on behalf of itself and its subsidiaries (collectively "TDS"), by its attorneys, comments concerning certain petitions for reconsideration filed pursuant to Section 1.429 of the Commission's rules with respect to the final action adopted in the Commission's Second Report and Order in the above-captioned proceeding.¹

INTRODUCTION

As described in our Petition for Reconsideration in this proceeding, the Commission should make a general reevaluation of cellular eligibility restrictions. We support open eligibility for all applicants including cellular licensees because we

¹ A list of parties filing petitions referenced in these comments including the abbreviated names used here is Attachment A hereto.

believe this approach is fully justified on the record and will make possible public benefits from the rapid, cost-effective and universal deployment of new and innovative services. Cellular carriers clearly are in a position to make an important contribution because of their established expertise, marketing capabilities and potential economics of scope between cellular and PCS technologies.

We and a number of other petitioners are also proposing changes in the Commission's eligibility restrictions to permit expanded opportunities for cellular participation in PCS deployment consistent with the Commission's policy objectives in the event the Commission is not disposed to adopt open eligibility. One such proposal which we and others including OPASTCO, ATU, Iowa Net and Rural Cellular are proposing is an exemption for rural telephone companies from the Commission's cellular eligibility restrictions so that these rural companies would have access to full capacity PCS technologies (i.e., more than 10 MHz channel blocks) to deploy PCS technologies in rural America. As discussed in our petition, this exemption should be adopted because of its important public benefits, which have been fully recognized by Congress and reflected in the Commission's statutory mandate.

We also strongly support cellular participation in PCS deployment where the cellular carriers involved cannot exercise "undue market power." As discussed below, we believe that the Commission's "20/10" eligibility threshold is overly broad and

should be redefined so that companies like TDS, Sprint, AllTel and others with relatively small geographically dispersed cellular operations are not unnecessarily restricted. Of the many alternative definitions of this threshold proposed in this proceeding, we support the "30-35/40" threshold proposed by CTIA.

We also discuss in subsequent sections of these comments other proposals in this proceeding opposing and supporting them as follows:

- Section 2 -- supporting post-grant options to establish compliance with cellular eligibility restrictions before initiating PCS service as proposed by McCaw and GTE;
- Section 3 -- supporting broadened eligibility restrictions to treat ESMR like cellular as proposed by CTIA and U.S. West;
- Section 4 -- opposing the expanded cellular eligibility restrictions proposed by MCI and GCI;
- Section 5 -- opposing the set-aside of PCS spectrum proposed by UTC for private non-commercial operations; and
- Section 6 -- supporting a uniform 20 MHz channel plan for all PCS providers as proposed by Bell Atlantic and Point.

DISCUSSION

1. Current Attribution and Overlap Standards Governing Cellular Eligibility should be Amended as Proposed by CTIA to Specify 30 or 35 percent Ownership Attribution and a 40 Percent Overlap

We agree with the arguments of CTIA that the rigid and highly restrictive cellular eligibility standards adopted in the Second Report and Order are "...more rigorous than necessary to achieve their desired purpose."² The Commission's concerns regarding the "potential for unfair competition" and exercise of "undue market power"³ must be reasonably balanced against the consumer benefits from participation by cellular operators in PCS including "lowering prices, improving service and increasing the availability of innovative products."⁴ Replacing the 20 percent ownership attribution and the 10 percent overlap standard in Section 99.204 of the Commission's rules with 30 or 35 percent ownership attribution and 40 percent overlap standards realistically permits an expanded role for smaller and geographically dispersed cellular carriers like TDS, AllTel, Sprint and others.

The Commission's eligibility restriction will restrict TDS and others from holding PCS licenses for more than 10 MHz channel blocks in many markets where the potential exercise of "undue market power" is not and could not be present.

² CTIA Petition, p. 20.

³ Second Report and Order, ¶ 105.

⁴ Id. at ¶ 104.

As described below, TDS would be restricted under current policies in 25 MTA markets (or 49% of all MTAs) even though the total of its cellular POPs, approximately 20,000,000, is approximately 25 percent of the total MTA POPs in these markets.

Based upon figures prepared by Sprint, it also appears that the adverse impact of the Commission's eligibility restrictions falls unfairly upon TDS, Sprint and AllTel because of the pattern of dispersal of their cellular interests. TDS is restricted under the Commission's "20/10" eligibility threshold in more MTA markets covering MTA POPs substantially in excess of the restrictions imposed on other companies with more than double the number of its attributed cellular POPs. As demonstrated in the Sprint Petition (Attachment A to that petition), the ratio of MTA POPs in areas subject to eligibility restrictions to attributed cellular POPs for TDS is vastly in excess of the comparable ratios for other major cellular carriers including McCaw, GTE, PacTel, BellSouth, Bell Atlantic, SBMS, Ameritech, NYNEX and U.S. West. Cellular carriers operating large regional systems are clearly less affected by the Commission's restrictions than companies like TDS who serve rural and other non-metropolitan areas. In effect, the Commission's selection of large MTA service areas in combination with the low 20 percent ownership attribution and 10 percent cellular overlap thresholds works to restrict PCS opportunities for companies like TDS to grow and compete with full capacity PCS systems (with greater than 10 MHz

of spectrum). This restriction is contrary to the Commission's stated objectives in this proceeding.

As described by numerous other petitioners, the Commission's "20/10" eligibility standard restricts opportunities for companies like TDS to participate in PCS deployment even where the cellular interests involved confer no demonstrable "undue market power." This is true because the cellular eligibility rules explicitly decline to take into account whether an entity controls a cellular licensee. Many minority, non-controlling ownership interests which obviously confer no market power are enough to preclude an entity from applying for a 20 or 30 MHz PCS license in a given MTA.

For example, pursuant to Section 99.204 of the FCC's rules, TDS will be precluded from applying for a 30 MHz authorization in the Phoenix, Arizona MTA because it holds indirectly minority, non-controlling general partnership interests in the wireline licensees in Arizona RSAs 4 and 5 (25%, and 23% respectively) and a 29.3% limited partnership interest in the Tucson, Arizona MSA wireline licensee. Neither TDS nor its cellular subsidiary, United States Cellular Corporation ("USCC") manages the system in any of those markets and thus would have no market power to collude on price with cellular licensees or do anything else injurious to competition even if it were a 30 MHz PCS licensee in the MTA.

In essence, the Commission's cellular eligibility rule assumes that a minority non-controlling interest in a cellular

licensee should be treated the same for regulatory purposes as a controlling majority interest. That is not a reasonable assumption or a fair result. Adoption of the CTIA proposed 30 or 35 percent ownership threshold would diminish much of the unfair impact of the Commission's current 20 percent ownership limit demonstrated above.

The Commission's cellular eligibility standard also imposes eligibility restrictions upon companies, such as TDS/USCC, which have widely dispersed, often rural, cellular properties and greatly diminishes the opportunities for such companies to participate in PCS deployment even though they are in no position to wield "undue market power" over PCS services. An eleven percent population overlap will disqualify a cellular licensee as readily as will a ninety percent overlap. A company with RSA licenses whose Cellular Geographic Service Areas ("CGSAs") cover only a little more than 10% of the population of the relevant MTA would be unable to file for more than a 10 MHz channel block even though it does not provide cellular service in any MSA markets within the MTA.

Of the 25 MTA markets where TDS would be restricted under current eligibility standards, it has cellular POPs amounting to less than 40 percent of the total MTA population in 21 markets. In 15 of these markets, the cellular POPs overlap is less than 20 percent of the total MTA population in those markets. In seven of these markets, it is less than 15 percent of the total MTA population. Attachment B lists the twenty-one MTA markets where

TDS has less than 40 percent and more than 10 percent cellular POPs overlap based on the Commission's "20/10" test.

As shown in Attachment B, the large majority of TDS's attributed POPs are in RSAs which, by definition, are the economically least significant portion of the MTAs involved. The total of RSA POPs in those 21 markets is almost double the total of MSA POPs. In five of these MTA markets, TDS is restricted even though it has no MSA cellular interests whatsoever in those markets.⁵ In an additional eight MTA markets, its MSA POPs are less than five percent of the total MTA POPs for the market involved. And in 21 of the 25 MTA markets where TDS is restricted, it has no attributable cellular POPs in the MSAs comprising the Rand McNally Major Trading Centers for those MTAs.

The Richmond-Norfolk, Virginia MTA is an example of how Section 99.204, as presently written, will restrict TDS from filing for a 30 MHz license in MTAs where it has no market power. TDS's attributable interests in the Richmond-Norfolk MTA include seven RSAs within the MTA, which together cover only 12.57% of the MTA population. TDS has no interests in any of the seven MSAs within the Richmond-Norfolk MTA, which arguably are the dominant economic sub-regions in this MTA.⁶ There simply is no

⁵ Columbus, OH, Honolulu, HI, Pittsburgh, PA, Richmond, VA, and Salt Lake City, UT.

⁶ These MSAs include: Norfolk-Virginia Beach-Portsmouth; Richmond; Newport News-Hampton; Roanoke; Lynchburg; Petersburg-Colonial Heights-Hopewell; and Danville.

basis for the Commission to assume in such circumstances that this level of cellular POPs overlap confers "undue market power."

It is axiomatic that the rules of the Commission must be rationally related to the purpose they purport to serve. As shown above, Section 99.204, as presently drafted, fails to meet that test. As discussed elsewhere in those comments, one reasonable and easy to administer way to achieve a rule that makes sense would be to raise the population overlap component of the rule to a more realistic figure, i.e. the 40 percent threshold as proposed by CTIA. If that were done, while the rule might still result in certain anomalies, particularly where non-controlling cellular interests were involved, it would still achieve its pro-competitive purpose by forbidding the participation of arguably "dominant" cellular licensees while allowing for the broad participation of cellular carriers in PCS which is clearly in the public interest.

We agree with Commissioner Barrett that the 20 percent cellular ownership attribution standard unfairly creates restrictions which are overly broad and counterproductive to the achievement of the Commission's public policy objectives. Commissioner Barrett was also correct in observing that the Commission's 10 percent cellular overlap standard "...does not make much market sense."⁷ The Commission should adopt the CTIA proposed limits as an appropriate balance of the Commission's

⁷ Dissenting Statement of Commissioner Andrew C. Barrett, p.14.

twin goals to protect the public from the exercise of undue market power and to promote consumer benefits from the rapid development and widespread development of PCS technologies.

2. Applicants Subject to Cellular Eligibility Restriction Should be Permitted to Bid for PCS Licenses Subject to Compliance With Eligibility Rules Before Initiating PCS Service.

We support the proposals of GTE and McCaw to permit cellular licensees to bid for MTA and BTA licenses provided they comply with cellular eligibility restrictions prior to initiating PCS service.

For companies like TDS with relatively small and widely dispersed cellular interests, the GTE and McCaw proposals provide needed flexibility to make realistic choices regarding maintenance of existing cellular interests or pursuing expanded opportunities in broadband PCS in MTA or BTA areas.⁸ We agree with GTE and McCaw that requiring divestiture before bidding would have highly undesirable consequences, and that there is ample Commission precedent for establishing post-grant compliance with ownership restrictions. Also possible risks of undue market power or unfair competition because of cellular/PCS cross-interests are avoided because compliance with eligibility restrictions would be required before initiating PCS service. The foregoing proposal of GTE and McCaw should be adopted as fully consistent with the Commission's objectives in this proceeding.

⁸ GTE Petition, pp.5-6, and McCaw Petition, p.6.

3. If Any Cellular Eligibility Restrictions are Retained, Such Restrictions Should be Broadened to Apply Equally to ESMR Operations.
-

Our preference is that the Commission should eliminate all cellular eligibility restrictions which would render the issues with respect to treatment of ESMR POPs and ownership attribution moot. If, on the other hand such eligibility restrictions are retained for cellular, it is essential that the fundamental consistency of the Commission's regulations as applied to cellular carriers and ESMR carriers be established and set forth fairly in the Commission's rules.

We agree with the proposals in the petitions of CTIA, Sprint and U.S. West that with the reclassification of service offerings provided over Enhanced Specialized Mobile Radio Systems ("ESMR") as provided under Section 332 of the Communications Act of 1934, as amended, the Commission's cellular eligibility restrictions should apply equally to ESMR operations.

Based upon the record in the Commission's Regulatory Treatment rulemaking in Gen Docket No. 93-252, it is clear that the Commission intends to permit ESMR, cellular and broadband PCS to provide functionally competitive service offerings. In these circumstances, and considering clear Congressional objectives in the legislative history of Section 332 of the Act to promote regulatory parity, ownership attribution in ESMR licensees and overlap of ESMR POPs with PCS markets POPs should be considered on the same basis as the eligibility standards applied to cellular.

4. The Commission Should Reject the Proposals of MCI and GCI to Exclude Certain Cellular Carriers from Bidding on One of the MTA Channel Groups.

We have previously opposed the proposal of MCI in the Commission's Competitive Bidding rulemaking in PP docket No. 93-253 to establish new cellular eligibility restrictions to preclude so-called "dominant" cellular carriers from bidding on one of the 30 MHz MTA licenses. We adopt our opposition to that proposal by reference here and also oppose the comparable proposal of GCI with respect to the same matters.

It makes no sense to exclude cellular companies which have spearheaded the launch and expansion of cellular mobile services in the last decade. The public benefits from their participation in the similar launch of broadband PCS technologies in terms of rapid, widespread, cost-effective development of these technologies to provide new and innovative services should be paramount in the Commission's considerations. We believe that the Commission has already gone much farther in restricting cellular participation than it should have by adopting the "20/10" cellular eligibility restrictions in the PCS rulemaking. The gratuitous expansion of those restrictions as proposed by MCI and GCI is totally unjustified and should be rejected as fundamentally at odds with the Commission's conclusion in its PCS Second Report and Order that "...the public interest would be served by allow-

ing cellular providers to obtain PCS licenses outside of their cellular service areas."⁹

5. The Commission Should Not Adopt an Exclusive Allocation for Private Non-Commercial PCS Systems.

We strongly oppose the exclusive allocation of PCS spectrum proposed by UTC for private non-commercial systems. UTC and any other entities interested in private operations will be able to acquire PCS spectrum under competitive bidding procedures and should be required to rely on that procedure rather than obtain a set-aside.

Under the proposals before the Commission in its Regulatory Treatment rulemaking in Gen Docket No. 93-252, the classification of service offerings, either Commercial Mobile or Private, will be based upon the characteristics of the offerings themselves. This means that the specific services provided via a licensed radio system will not be inherently Commercial Mobile or Private, but could be either, as the licensee decides.

We have proposed in comments filed in Gen Docket No. 93-252 that PCS licenses initially be awarded under a Commercial Mobile classification because we anticipate that such offerings will be the predominant use. We did not propose to preclude private operations via PCS spectrum. Nor do we see any indication in the Commission's opinions in this proceeding to preclude private uses of PCS spectrum. This being the case, we believe that the

⁹ PCS Second Report and Order in Gen. Dkt. 90-31 (released October 22, 1993), ¶ 104.

Commission should deny UTC's proposal as unnecessary and counter-productive to the broad objectives of promoting the rapid and widespread public availability of PCS technologies.

6. The Channel Plan Should be Altered to Permit Six 20 MHz Channel Blocks or, Alternatively, Two 30 MHz Blocks and Three 20 MHz Blocks.

We proposed in our petition for reconsideration¹⁰ reallocation of the PCS channel blocks to establish six 20 MHz allocations. Alternatively, we would support allocation of two 30 MHz and three 20 MHz blocks.¹¹

We agree with the analysis of Bell Atlantic that the six 20 MHz plan would be easy to implement and is technically, economically, and competitively superior to the Commission's current plan. We also strongly support this plan, or our alternative, because it provides 20 MHz of spectrum as the minimum block size for effective deployment of competitive PCS service offerings.¹²

¹⁰ TDS Petition, p. 2, Fn. 2.

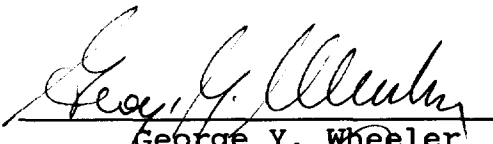
¹¹ The set-asides for designated entities would be in the case of the six-20 MHz plan, two 20 MHz blocks in the lower band. In our alternative plan, the designated entity set-aside blocks would be one 20 MHz allocation in the lower band and one 20 MHz allocation in the upper band.


¹² We agree with the analysis in the petition of NYNEX (p. 12) that aggregated PCS spectrum of 20 MHz or more is necessary for effective competition with 30 or 40 MHz PCS systems.

CONCLUSION

We support here a number of changes and clarifications in the Commission's rules and policies which we believe will expand opportunities to participate in PCS deployment and thereby contribute substantially to the achievement of the Commission's four goals in these proceedings. To achieve this highly desirable result, the Commission should adopt open eligibility or, at a minimum, expanded eligibility opportunities, exemptions from cellular eligibility restrictions for rural telephone companies and extended compliance deadlines to divest restricted cellular cross-interests. To produce the greatest consumer benefits, the Commission should also deny the proposals of MCI, GCI, UTC and others which attempt to create additional restrictions on fair opportunities for numerous and diverse participation in PCS deployment.

Respectfully submitted,
TELEPHONE AND DATA SYSTEMS,
INC.

By 
George Y. Wheeler

By 
Peter M. Connolly

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December 30, 1993

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ALLTELL Service Corporation	("AllTel")
Ameritech	("Ameritech")
Bell Atlantic Personal Communications, Inc.	("Bell Atlantic")
BellSouth Corporation	
BellSouth Telecommunications, Inc.	
BellSouth Cellular Corp.	
Mobile Communications Corporation of America	("BellSouth")
Cellular Telecommunications Industry Association	("CTIA")
General Communication, Inc.	("GCI")
GTE Service Corporation	("GTE")
Iowa Network Services, Inc.	("Iowa Net")
MCI Telecommunications Corporation	("MCI")
McCaw Cellular Communications, Inc.	("McCaw")
NYNEX Corporation	("NYNEX")
Organization for the Protection and Advancement of Small Telephone Companies	("OPASTCO")
Pacific Telecom Cellular, Inc.	("PacTel")
Point Communications Company	("Point")
Rural Cellular Association	("Rural Cellular")
Southwestern Bell Corporation	("SBMS")
Sprint Corporation	("Sprint")
U.S. West, Inc.	("U.S. West")
Utilities Telecommunications Council	("UTC")

MTA Markets Where TDS Would Be
Restricted Under FCC "20/10" Rule

MTA Market	Total Attributed Cellular POPs	% of Total MTA POPs	Total RSA Attributed POPs	% of Total MTA POPs	Total MSA Attributed POPs	% of Total MTA POPs
Boston, MA	1,956,000	20.7	822,000	8.7	1,134,000	12.0
Charlotte, NC	2,340,000	24.0	2,148,000	22.0	192,000	2.0
Columbus, OH	274,000	12.8	274,000	12.8	-0-	-0-
Honolulu, HI	120,000	10.9	120,000	10.9	-0-	-0-
Jacksonville, FL	795,000	34.9	591,000	26.0	204,000	8.9
Kansas City, MO	374,000	12.8	239,000	8.2	135,000	4.6
Little Rock, AR	321,000	15.6	102,000	4.9	219,000	10.7
Louisville, KY	560,000	15.7	473,000	13.3	87,000	2.4
Milwaukee, WI	491,000	10.8	279,000	6.1	213,000	4.7
Minneapolis, MN	675,000	11.3	241,000	4.0	435,000	7.3
New Orleans, LA	931,000	18.9	80,000	1.6	851,000	17.3
Oklahoma City, OK	576,000	30.7	519,000	27.7	57,000	3.0
Phoenix, AZ	944,000	26.9	277,000	7.9	667,000	19.0
Pittsburgh, PA	646,000	15.7	646,000	15.7	-0-	-0-
Portland, OR	634,000	20.7	488,000	15.9	146,000	4.8
Richmond, VA	483,000	12.6	483,000	12.6	-0-	-0-
St. Louis, MO	767,000	16.4	655,000	14.0	112,000	2.4
Salt Lake City, UT	404,000	15.7	404,000	15.7	-0-	-0-
San Antonio, TX	989,000	33.1	472,000	15.8	517,000	17.3
Seattle, WA	537,000	14.0	348,000	9.1	189,000	4.9
Spokane, WA	362,000	19.5	212,000	11.4	150,000	8.1

NOTE: The twenty-one MTA Markets listed here include those for which TDS has less than a 40% and more than 10% cellular POPs overlap. TDS is also restricted in the following additional MTA markets: Tulsa, OK; Nashville, TN; Des Moines, IA and Knoxville, TN.

CERTIFICATE OF SERVICE

I, Judy Cooper, a secretary in the law firm of Koteen & Naftalin, do hereby certify that a copy of the foregoing "Comments of Telephone and Data Systems, Inc.", was sent by first class U.S. mail, postage prepaid, on this 30th day of December, 1993 to the offices of the following:

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